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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

In re CAMRON K., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

CAMRON K.,

Defendant and Appellant.

A153435

(Napa County Super.
Ct. No. JV18519-A)

Camron K. seeks dismissal of a petition filed under Welfare and Institutions Code section 602, alleging that he attempted by means of a threat to deter an officer from performing his lawful duty in violation of Penal Code section 69¹ (count 2) and directly communicated a threat of unlawful injury to an officer to cause him to refrain from performing his duty in violation of section 71 (count 1). Both violations were alleged to have occurred in his February 2017 encounter with a school resource officer at his high school. At the jurisdictional hearing, the juvenile court found he committed misdemeanor violations of both offenses and subsequently placed him on probation. Camron contends there is no substantial evidence to support these findings, and that a belligerent statement he made near the end of the encounter was within his free speech rights. We conclude there is sufficient evidence that he violated section 69, but

¹ All further statutory references are to the Penal Code.

insufficient evidence that he violated section 71, and that we need not address his free speech argument. We affirm in part and reverse in part, vacate the juvenile court's dispositional order and remand this matter to the juvenile court to revisit its disposition based solely on a true finding of a misdemeanor violation of section 69.

BACKGROUND

In October 2017, the Napa County District Attorney filed an amended petition regarding Camron, then 17 years old. The district attorney alleged he had directly communicated a threat of unlawful injury to an officer to cause him to refrain from performing his duty (§ 71) (count 1), attempted to deter a police officer from performing his duty by means of a threat (§ 69) (count 2), both felonies, and disturbed the peace of a school campus (§ 451.5, subd. (a) (count 3)), a misdemeanor.

A contested jurisdictional hearing was held in November 2017. Albert Washington, a Napa County Deputy Sheriff, and Camron testified.

I.

Deputy Washington's Testimony

Deputy Washington testified that he was the full-time school resource officer at Liberty High School and Chamberlain High School, two continuation schools on the same campus. On February 21, 2017, at about 1:50 p.m., he was in uniform and in his patrol car monitoring the school parking area while students waited at the end of the school day for a public transit bus. A teacher requested that the deputy help her confiscate a San Francisco Giants baseball hat from Camron, who was a student at one of the schools. School rules and policy, which were "signed" by all students and their parents, prohibited students from wearing any logoed attire because some students used such attire to demonstrate gang ties. Washington said "[a] lot of times" Norteño gang members wore Giants hats because the hats contained red. Washington testified about his encounter with Camron, who Washington said was not affiliated with any gangs. Also, significant parts of the encounter were recorded on Washington's body camera, and the video, which includes sound, was shown to the court at the hearing.

The video starts with Camron, who appears to be at least Washington's height, standing outside on school grounds directly in front of Washington and wearing a baseball-style hat on his head, a button-down shirt and a backpack. Camron refers to a "contract," that "it says in the contract" and that he is "about to get on the bus." Washington, whose tone is calm throughout the video, replies, "We're about to take your hat," to which Camron says, "You're not going to steal my hat." As Camron steps to his left and away from Washington towards a bus waiting at the curb of a parking lot, Washington says, "I'm not stealing it, I'm going to take it," and with his left hand grabs the bill of the hat and takes it from Camron's head.

Camron immediately turns toward Washington and takes a step forward, his arms down, coming very close to Washington. Washington says, "Bro, don't, don't, don't, I'm the last one you want to swing on, okay?" Camron stops, denies he was going to "swing on" Washington, and asks, "Why're you stealing my stuff?" Washington says he will turn in the hat and tells Camron to come to his office the next day. Camron continues to stand very close to Washington as he asks in an increasingly agitated manner why Washington is "stealing" his hat, says Washington's badge does not give him the right to steal his hat and insists he does not have to come to Washington's office. Two adults, presumably school staff, are standing nearby.

Washington says in effect that the hat is not Camron's and moves a few steps away. He tells Camron he gave him the opportunity to turn over the hat, to which Camron responds that it's his "fucking hat" and that he is about to get on the "fucking bus." After Washington again tells Camron to come see him the next day, Camron strides towards Washington as he says, "You're not going to steal my shit" until he is standing very close to Washington. He reaches forward with his left arm, which is only partially visible because of Camron's proximity to the camera. Washington says, "You're about to lose this one, please go back and get on the bus. That's all I'm going to tell you."

During the next few moments, Camron continues to insist Washington is wrongfully taking his hat. Washington continues to insist Camron get on the bus, and

Camron moves so close to Washington that his shirt fills the screen. Washington's voice tenses as Camron again seems to reach forward and Washington says, "Now, if you reach for it again . . .," which is followed by verbal exchanges along the same lines as before.

The video continues for about two and a half more minutes. During that time, Washington tells the bus driver the bus can leave and, when the driver says Camron's bicycle is attached to the front of the bus, Washington and Camron each appear to grab different parts of the bicycle. As they continue to exchange words, Camron lets go of the bicycle and Washington removes it from the front of the bus. Camron grabs once for it as Washington roughly puts it on the sidewalk and it crashes to the ground. Camron steps very close to Washington, possibly to go to his bicycle. Washington grabs a fistful of Camron's shirt in the chest area and, arm extended, moves him from the parking lot pavement to the sidewalk, shoves him away and tells the bus to go. Camron appears surprised at this treatment and continues to talk in an agitated manner to Washington.

As Camron continues to ask questions and insult and curse at Washington, Washington walks to his patrol car, parked in the middle of the parking lot, leaving Camron behind on the sidewalk by his bicycle. As Washington gets in his car, Camron yells something inaudible as he begins pushing his bicycle alongside the sidewalk curb away from Washington. Washington wrote in his report that Camron said, " 'If you take that badge off, I will kick your fucking ass.' " Washington replies on the video, "Any time, buddy, any time!" as he gets into his car. The video then ends.

Washington testified that as he was sitting in his patrol car waiting for the school staff to leave, Camron turned around and came up to his vehicle. Washington reactivated his body camera² and stood in the car doorway. Camron wanted to know why Washington had touched him. Washington told him to leave, but Camron continued to argue angrily from three or four feet away, using profanity, for a few minutes. Washington got back in his car and Camron said, " 'fuck you' " and " 'you pig.' " Washington then drove off.

² The resulting second video recording is contained in the record, but the parties do not indicate the juvenile court reviewed it. Therefore, we do not consider it.

According to Washington, Camron came to his office the next day to speak with him. Camron apologized for what he had said and wanted to know why Washington had touched him. Washington told him “ ‘We’re not going to go into that again,’ ” and Camron left his office.

At the hearing, Washington testified about the details of his encounter with Camron. He did not know when Camron put the hat on his head or whether he had gotten on the bus before Washington approached him, but the school day did not end for students until the transit bus reached the downtown transit station in Napa. The school rule prohibiting the wearing of logoed attire applied to students on the bus until they reached the downtown station.

Washington testified that when he took the hat from Camron’s head, Camron moved toward him with fists clenched (they are not visible in the video), which Washington took to be a “fighting stance” and “somewhat of an aggressive stance.” He did not try to grab Camron, but instead tried to keep his distance. After Camron denied he was going to “swing” at Washington, Camron continued to stand in what Washington considered to be a fighting stance and talked in an animated manner. Camron was angry and “just started to shake. So he was very agitated.”

Washington, asked why he did not allow Camron to have his bicycle when he took it off the front of bus, said Camron “fought back and forth about . . . getting on the bus, . . . not taking his bike off. So my intentions were to take it off, get it out of the way and that allows the bus to go through.” Washington contended that when he pulled the bicycle off the bus, “Camron grabbed it and threw it back on the bus, basically telling me I couldn’t take his bike.” However, the video contradicts this testimony; it shows, as we have discussed, Camron at first momentarily grabbed a part of the bicycle, let go and grabbed at it once as Washington carried it to the sidewalk.

Washington said Camron did not use force against him at any time and did not physically touch him, but Camron did get into his “personal space.” Camron tried “several times” to grab his hat from Washington, who could tell Camron was grabbing for the hat and did not perceive this as a physical attack on him. Moreover, Washington

did not perceive any of Camron's actions as physical violence, and Camron did not raise his fists during the encounter.

II.

Camron's Testimony

Camron testified that the day before the encounter, the school principal gave him permission to wear his hat on the bus. On the day of the encounter, he put his hat on when he boarded the bus. A teacher told him to step off the bus. When Washington arrived, Camron told him he was allowed to wear his hat on the bus, but Washington was unwilling to discuss the matter.

Camron said he was unaware that the bus driver wanted to leave when he and Washington were standing in front of the bus. He wanted to remove his bicycle from the bus himself, so he grabbed it when Washington started to lift it from the rack, but he was not trying to keep it on the rack. Although his bicycle had a kickstand, Washington did not use it and instead tossed the bicycle on the sidewalk. When Camron took a step towards the sidewalk, Washington pushed him back, grabbed him, pushed him onto the sidewalk and held him there until the bus left, which Camron did not consider "fair."

Camron also testified that he was "childish and mean" during the incident with Washington. However, he was not trying to fight or interfere with Washington, and never touched the officer. When he said he would kick Washington's "ass" if Washington was not wearing a badge, he was "pretty mad." It was "unreasonable" to say this, but he "wasn't trying to fight" Washington. He was "just agitated."

III.

The Juvenile Court's Jurisdictional Order

After hearing argument by counsel, the juvenile court sustained the allegations that Camron had used a threat to prevent or deter an officer from performing his lawful duty in violation of section 69 and attempted, by threatening to inflict unlawful injury, to cause an officer to refrain from doing his duty in violation of section 71, but the court reduced these offenses to misdemeanor violations. At first, the court suggested it was only sustaining count 2, the allegation that Camron violated section 69. After reviewing the

elements of a violation of that statute, the court addressed Camron: “I will find that you did not use violence but that you did use threat of violence, and Deputy Washington indicated that he was concerned that you were going to do so. And when you acted, you intended to prevent or deter the executive officer, in this case Deputy Washington, from performing his lawful duty.” The court then stated that Camron’s threat was made “orally.” As to the other two counts, the court stated it “will just leave those alone. I think this is enough to go forward.”

A moment later, however, the court, apparently referring to the section 71 allegation, stated, “I don’t think there is any question that he threatened a public officer, but I will reduce that to a misdemeanor as well.” The court dismissed the third count.

Camron’s counsel sought clarification of the court’s findings. He asked if the court considered the “threat” to be Camron’s statement that if Washington removed his badge he, Camron, would “kick your fucking ass,” made as Washington was walking back to his patrol car. The court responded, “I’m referring to the comments that Camron made to Deputy Washington. I’m taking all of the evidence together. It’s not just one particular statement but his demeanor in the video, his continuous questions about what’s going on, his profanity that he’s using, the fact that Deputy Washington testified that Camron’s fists were balled and clenched when he was coming toward him and that he was so angry that Camron was starting to shake and that he was being so uncooperative; that I felt that those were certainly threats and that is the way that Deputy Washington took those threats as well. So it’s the cumulative evidence that was presented. It’s not just like one statement or one picture.”

At the dispositional hearing in January 2018, the court declared Camron to be a ward of the court and placed him on probation, adopted numerous recommendations by the probation department about the terms and conditions of that probation, and indicated it would consider dismissing if Camron returned in six months with a good performance record. Camron filed a timely notice of appeal.

DISCUSSION

I.

Substantial Evidence Supports the Court's Section 69 Finding.

Section 69, subdivision (a) provides criminal punishment for “[e]very person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon the officer by law, or who knowingly resists, by the use of force or violence, the officer, in the performance of his or her duty” Thus, section 69 can be violated by either “ ‘attempting by threats or violence to deter or prevent an officer from performing a duty imposed by law’ ” or “ ‘resisting by force or violence an officer in the performance of his or her duty.’ ” (*People v. Smith* (2013) 57 Cal.4th 232, 240 (*Smith*), quoting *In re Manuel G.* (1997) 16 Cal.4th 805, 814 (*Manuel G.*)). Violating section 69 through a threat “ ‘requires a specific intent to interfere with the executive officer’s performance of his duties.’ ” (*People v. Sivongxxay* (2017) 3 Cal.5th 151, 195, quoting *People v. Gutierrez* (2002) 28 Cal.4th 1083, 1153.) The resisting prong requires only general intent. (*People v. Rasmussen* (2010) 189 Cal.App.4th 1411, 1420–1421.) The threat does not require the use of force or violence. (*Smith*, at p. 240.)

Also, section 69 “ ‘encompasses attempts to deter *either* an officer’s *immediate* performance of a duty imposed by law *or* the officer’s performance of such a duty at some time *in the future*.’ ” (*Smith, supra*, 57 Cal.4th at p. 240, quoting *Manuel G., supra*, 16 Cal.4th at p. 817.) “Section 69, however, does not reach threats made only in response to or in retaliation for an officer’s *past* performance of his or her duties.” (*Manuel G.*, at p. 817, fn. 6.) Unlike section 71, “a violation of section 69 does not require a showing of the state of the mind of the recipient of the threat.” (*People v. Gutierrez, supra*, 28 Cal.4th at p. 1153.)

We review the sufficiency of the evidence in a juvenile proceeding by applying the same standard we use to review the sufficiency of the evidence of a criminal conviction. (*In re Sylvester* (2006) 137 Cal.App.4th 601, 605.) We determine “ ‘whether, after viewing the evidence in the light most favorable to the prosecution, *any*

rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ ” (*People v. Holt* (1997) 15 Cal.4th 619, 667.) We review “ ‘ “the entire record [to determine whether] there is substantial evidence, contradicted or uncontradicted, which will support the determination.” ’ ” (*People v. Semaan* (2007) 42 Cal.4th 79, 88.) Also, we disregard the court’s reasoning because “[t]he decision of the juvenile court, if correct, will be upheld even if the stated reasons for the decision are erroneous or incomplete.” (*In re Lucero L.* (2000) 22 Cal.4th 1227, 1249–1250.) Reversal is not warranted “unless it appears ‘that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].’ ” (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

Camron’s challenge to the court’s finding that he violated section 69 focuses solely on the statement he yelled at Washington from the sidewalk curb area as Washington approached his patrol car in the middle of the school’s parking lot, i.e., “ ‘If you take that badge off, I will kick your fucking ass.’ ” According to Camron, this was not a threat punishable under section 69 and it was within his free speech rights under the First Amendment of the federal Constitution, contentions which the People oppose. For reasons we will discuss, we agree with Camron that this statement did not violate section 69. This determination renders it unnecessary for us to resolve the parties’ debate over whether Camron’s constitutional free speech rights bar prosecution of him for making that statement.

Camron’s belligerent statement that he would “kick” Washington’s “fucking ass,” made as Washington walked away from Camron and toward his patrol car, cannot reasonably be viewed as an attempt to deter or prevent an officer from performing a duty imposed by law, a necessary element of a violation of section 69. Washington had already confiscated Camron’s hat, the bus had left and Washington had returned to his patrol car. Also, as shown in the video, Camron yelled the statement when he was at a considerable distance from Washington and was walking *away from*, not toward, him. Nor did Camron say or do anything to indicate he would act on his statement to interfere with Washington’s performance of duties in the future; indeed, he conditioned the

“threat” on Washington taking off his badge, further undermining any suggestion of intent to harm Washington while he was acting as an officer. In short, no reasonable trier of fact could conclude Camron made this statement with the specific intent to interfere with Washington’s performance of his duties, and it provides no support for the juvenile court’s finding that he violated section 69.

That does not end our substantial evidence analysis, however, because Camron’s parting statement to Washington was one small part of a larger encounter. As we have discussed, we must review the entire record and, viewing the evidence in favor of the court’s ruling, determine whether substantial evidence supports the court’s conclusion, regardless of whether we agree with its reasoning. Applying this standard to the record in its entirety, we conclude there was substantial evidence supporting the court’s section 69 ruling.

The video and Washington’s testimony indicate that Camron at least twice came very close to Washington and attempted to grab his hat away from Washington. Washington did not think Camron intended to physically attack him when grabbing for the hat, but Washington also testified that Camron accused Washington of “stealing” his hat, told Washington “you’re not going to steal my hat,” repeatedly attempted to grab the hat, came very close to Washington, clenched his fists, maintained this “aggressive” or “fighting” stance for some period of time and did this while shaking with anger and speaking in an animated and agitated way. This evidence, taken together, is substantial evidence that Camron threatened Washington, through words and actions,³ in order to deter Washington from performing his duty, i.e., to confiscate and retain the hat Camron wore in violation of school rules. Camron also by this same action “resisted”⁴

³ Section 69 refers to a deterring “threat” without distinguishing between a verbal and a non-verbal one. Our Supreme Court has recognized in another context that a threat can be either verbal or nonverbal. (See *People v. Barnes* (1986) 42 Cal.3d 284, 304 [in forcible rape cases, courts may consider “the presence of verbal or nonverbal threats”].)

⁴ To “resist” means, among other things, “to withstand, strive against, or oppose,” or “to make a stand or make efforts in opposition; act in opposition; offer resistance.” (<<https://www.dictionary.com/browse/resist>> [as of April 8, 2019].)

Washington by the use of force—albeit only his attempted grabbing of the hat—in Washington’s performance of that same duty. This evidence is sufficient to establish a violation of section 69, and we therefore affirm the trial court’s sustained finding of that violation.

II.

Substantial Evidence Does Not Support the Court’s Section 71 Finding.

Section 71 provides criminal punishment for “[e]very person who, with intent to cause, attempts to cause, or causes, any . . . public officer . . . to . . . refrain from doing, any act in the performance of his duties, by means of a threat, directly communicated to such person, to inflict an unlawful injury upon any person or property, and it reasonably appears to the recipient of the threat that such threat could be carried out”

Camron argues there is no substantial evidence that he violated section 71. We agree for three reasons. First, Camron’s statement that, if Washington removed his badge, Camron would “kick” his “ass” was not a threat to inflict an unlawful injury on Washington in violation of section 71 because, as we have discussed, there is no evidence that Camron made this statement in order to cause Washington to refrain from doing any act in the performance of his duties. Rather, taking Camron’s statement at face value, he at most invited Washington to take off his badge, i.e., go *off* duty, so that Camron could engage him in a fight. Further, while Camron tried to take his hat from Washington, there was no evidence that he intended to injure Washington in doing so, and Washington did not perceive Camron’s efforts to take his hat as a physical attack.

Second, there was no evidence that Washington reasonably believed Camron would carry out his verbal threat, although such a belief is a necessary element of a section 71 offense. (See *People v. Tuilaepa* (1992) 4 Cal.4th 569, 590 [defendant, housed in a maximum-security youth facility, did not violate section 71 when he threatened to harm certain facility employees, including because the employees did not actually fear for their safety]; cf. *In re Ernesto H.* (2004) 125 Cal.App.4th 298, 311 [finding a threat violated section 71 in significant part because its recipient felt the minor

was serious, feared for his safety and believed the minor might retaliate against him in the future].)

Third, nothing in the record indicates that Camron at any time in his encounter with Washington threatened to inflict an unlawful injury upon any property. Camron tried to grab his hat away from Washington, but there is no evidence he did so to cause any injury to it, and the same is true for his grabs at his bicycle. There is no evidence that Camron threatened or attempted to do any harm to the bus either.

In short, under the totality of the circumstances and interpreting the evidence in favor of the court's ruling, we conclude that, while there is substantial evidence that Camron attempted to grab his hat away from Washington, there is not substantial evidence that Camron threatened to inflict an unlawful injury upon Washington so as to violate section 71.

DISPOSITION

The juvenile court's order finding Camron committed a misdemeanor violation of section 69 is affirmed. The court's order finding Camron committed a misdemeanor violation of section 71 is reversed. The court's dispositional order is vacated and this matter is remanded to the juvenile court to consider a disposition based upon a violation of section 69 alone.

STEWART, J.

We concur.

KLINE, P.J.

MILLER, J.

People v. Camron K. (A153435)